IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7155 of 2007()

CRIME NO. 736/2007 OF KOTTARAKKARA POLICE STATION

PETITIONER/1ST ACCUSED

GIRISH KUMAR, S/O. SOMASEKHARAN,
AGED 32 YEARS, GURU BHAVAN, SRI NARAYANA PURAM,
CHERUMANGAD, PAVITHRESWARAM, KOTTARAKKARA.

BY ADV. SRI.SANTHAN V.NAIR
SRI.A.MUHAMMED RAFFI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KOTTARAKKARA POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7155 of 2007

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Dated this the 30th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. Two named accused and four not named identifiable persons, are arrayed as accused. The crime is registered for offences punishable, inter alia, under Section 452 I.P.C. That is the only non-bailable offence alleged. The incident took place on 7.10.2007 at 8 p.m. On account of animosity arising from the complaint raised by the defacto complainant about illicit quarrying which was taking place in the locality, the petitioners allegedly armed with dangerous weapons trespassed into the house of the defacto complainant and indulged in wanton acts of violence and mischief. Damage was caused to the house. Injuries were caused to the father of the defacto complainant. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the

petitioner is absolutely innocent. Allegations are raised with the transparent intention of vexing and harassing the petitioner. There is a dispute regarding return of money between the defacto complainant and the accused. Because of such dispute, false allegations are being raised, it is submitted.

3. The learned Prosecutor opposes the application. He submits that all available indications point to the truth and correctness of the allegations raised. In any view of the matter, this is not a fit case where directions under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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